IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3942 of 2005

For Approval and Signature:

HON'BLE MR.JUSTICE AKIL KURESHI

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

N.H. SADWANI DY.SUPDT. OF POLICE (RETD.)

Versus

STATE OF GUAJRAT

Appearance:

1. Special Civil Application No. 3942 of 2005

MR NIKHIL S KARIEL for Petitioner

MR SP HASURKAR, AGP for Respondents

CORAM : HON'BLE MR.JUSTICE AKIL KURESHI

Date of decision: 15/04/2005

ORAL JUDGEMENT

Rule. Learned AGP Shri Hasurkar waives service of notice of rule on behalf of the respondents. At the joint request of the learned advocates appearing for the

parties, the petition is taken up for final disposal today.

2. In the present petition, the petitioner has made a grievance that since his retirement with effect from 31st October, 2002, he has not received number of post retiral benefits. It is the case of the petitioner that no departmental inquiry or criminal case is pending against the petitioner and despite this, the petitioner has been paid only provisional pension. Since his pension is not finalised he is not permitted to commute the pension nor has the petitioner been paid his gratuity.

3. On behalf of the respondents, it is being submitted that on account of the contemplated departmental inquiry, the gratuity of the petitioner has not been released and his pension is not finalised. It is submitted that as long as the pension of the petitioner is finally fixed, it is not possible to commute any part thereof.

4. It is not in dispute that the petitioner has retired from the Government service as far back as in October 2002. It is equally not in dispute that so far no departmental inquiry has been initiated against the petitioner. In view of the provisions of rules 143 and 144 of the Gujarat Civil Services (Pension) Rules, 2002 it is not possible to withhold the entire gratuity of the petitioner. In this regard, it is stated by the learned AGP that on 6.4.05, the respondents have requested the petitioner to furnish certain details which would permit the respondents to release the gratuity of the petitioner to the permissible limits.

5. If the petitioner complies with the requirements as communicated in the letter dated 6.4.05, the respondents shall release the gratuity of the petitioner to the permissible limits within a period of two weeks of such compliance.

6. With respect to the question of contemplated inquiry, it cannot be denied that the respondents cannot wait indefinitely deliberating whether there is sufficient material to proceed against the petitioner departmentally or not. Having already retired in October 2002, the respondents have already taken sufficient time to decide whether the inquiry is to be instituted against the petitioner or not. Only in order to ensure that if there is material with the Government to proceed against the petitioner, he may not escape without any liability,

some time is given to the respondents to take a final decision whether any inquiry should be instituted against the petitioner or not. Such a decision shall be taken within a period of three months from the date of receipt of a copy of this order. If no inquiry is initiated within the above mentioned period, the petitioner shall be entitled to finalization of his pension and to receive full retiral benefits. Since the entitlement of the petitioner to receive full pension and gratuity is not being decided in this petition, his request for being paid interest is also not finally concluded. It will be open for the petitioner to agitate such a question when the stage arises.

7. With the above directions, the petition is disposed of. Rule is made absolute to the above extent with no order as to costs.

(Akil Kureshi, J.)
(vjn)